

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, COUNTY DIVISION

ILLINOIS GREEN PARTY, *a voluntary*  
*association and political party, and*  
LAUREL LAMBERT SCHMIDT,

Plaintiffs,

v.

ILLINOIS STATE BOARD OF  
ELECTIONS, and WILLIAM M.  
McGUFFAGE, Chairman, JESSE R.  
SMART, Vice-Chairman, BRYAN A.  
SCHNEIDER, BETTY J. COFFRIN  
HAROLD D. BYERS, JUDITH C. RICE,  
CHARLES W. SCHOLZ, ERNEST L.  
GOWEN, *in their official capacities as*  
*Members of the Illinois State Board of*  
*Elections.*

Defendants.

No. 2011- CH - 36783

Judge Edmund Ponce de Leon

**MEMORANDUM OPINION AND ORDER**

This cause comes before the court on Plaintiffs' Complaint for Declaratory Judgment and Preliminary and Permanent Injunctions and for Summary Judgment.

**Background**

Plaintiff Illinois Green Party (*hereinafter* "ILGP") is a state political party recognized by the Federal Election Commission and an affiliate of the national political party, Green Party of the United States. The Election Code (10 ILCS 5/10-2) provides that political parties are deemed an "established political party" when, in the last general election, the party's candidate for Governor received at least 5% of the vote, or, in the alternative, where the party's candidate for office in a particular district or political subdivision received at least 5% of the vote in the last

general election, the party is an “established political party” for that district or political subdivision only.

The ILGP candidate for Governor in the November 2, 2010 general election did not receive 5% of the total votes cast for that office. Plaintiff Schmidt (*hereinafter* “Schmidt”) was the recognized candidate for ILGP for the office of Representative to the U.S. Congress for the Third Congressional District, in the November 2, 2010 general election and received 6% of the total votes cast for that office. ILGP candidates also received at least 5% of the vote in a number of other U.S. Congress, Illinois General Assembly, and local office elections.

Following the November 2, 2010 general election, statewide redistricting left some of the districts re-drawn, including the Third Congressional District in which Schmidt intends to seek office in the 2012 general election. Defendant Illinois State Board of Elections (*hereinafter* “ISBE”) has issued a “Candidate’s Guide- 2012” which sets forth the filing requirements and petition signature requirements for candidates. In the Candidate’s Guide-2012, the ISBE did not identify ILGP as an established political party, and, therefore, the filing and petition signature requirements of Schmidt and other similarly situated ILGP candidates are greater than candidates from established parties, and Schmidt and other similarly situated ILGP candidates can not afford themselves of the benefits of the primary process.

In September, 2011, the ILGP administration sent the ISBE a letter requesting clarification of the ILGP’s status and requesting the ISBE recognize the ILGP as an established party for the districts and political subdivisions that the ILGP candidate received 5% of the vote prior to the redistricting. The ISBE responded with a memorandum presented at its October 18, 2011 board meeting, affirming its party designation of ILGP. The ISBE also verbally informed ILGP

executives that the ISBE would not accept petitions submitted by ILGP candidates as “established party candidates” for the March 20, 2012 primary election

Plaintiffs ILGP and Schmidt have argued that the actions of the ISBE have placed their First Amendment ballot access rights in jeopardy, that they face irreparable harm if they are left off the ballots, and that there is no adequate remedy at law. They also argue that because the ISBE has stated its intention to refuse to accept the “established party” nominating papers of ILGP candidates for primary elections, there will be no determination of sufficiency of the nominating papers of ILGP candidates, and therefore no decisions from which the ILGP candidates could seek judicial review. As such, the Plaintiffs argue that they have exhausted their administrative remedies, and they ask the court for declaratory judgment in their favor, and for summary judgment, finding that the ILGP is an established political party per the Election Code, and ordering the ISBE to amend its Candidate’s Guide and accept the nominating papers of qualified candidates.

### **Discussion**

A plaintiff seeking a declaratory judgment must show that there exists an actual justiciable controversy. *SBL Associates v. Village of Elk Grove*, 247 Ill. App. 3d 25, 29 (1993). “Actual controversy has been interpreted to mean a concrete dispute admitting of an immediate and definitive determination of the parties’ rights, the resolution of which will aid in the termination of the controversy or some part thereof”. *Id.* The requirement of actual controversy “requires a showing that the underlying facts and issues of the case are not moot or premature with the result that a court passes judgment upon mere abstract propositions of law, renders an advisory opinion, or gives legal advice concerning future events.” *Messenger v. Edgar*, 157 Ill. 2d 162, 170 (1993).

A complaint for declaratory judgment must recite in sufficient detail an actual and legal controversy between the parties and must demonstrate that the plaintiff is interested in the controversy. *Underground Contractors Association v. City of Chicago* 66 Ill. 2d 371, 375-76 (1977). The requirement that an actual controversy be present does not mean that a party must have been wronged or suffered an injury. *Id.* An "interest in the controversy" means that the plaintiff must have a personal claim or right which is capable of being affected. *First of Am. Bank, N.A. v. Netsch*, 166 Ill. 2d 165, 173 (1995).

The Plaintiffs in the present case do demonstrate that an actual controversy exists. The rights to appear on a ballot are significant, and an increase in the obstacles a candidate faces to successfully appear on a ballot affects these rights and is, therefore, a dispute that is justiciable. Further, Plaintiffs do have an interest in this controversy because under the current ISBE designation, they will be excluded from the primary process, and required to submit more signatures than candidates from an established political party, they are directly affected by the ISBE's designation of their party as a non-established political party.

Plaintiffs' argument that they have exhausted all administrative remedies is also persuasive. Because the process for submitting nominations differs between candidates for established and non-established parties, the ISBE, by designating the ILGP a non-established party in its Candidate's Guide-2012 and in a memo submitted at its October 18, 2011 Board meeting, and verbally informing an ILGP executive that it would not accept "established party" nominating papers from ILGP candidates, has effectively denied ILGP candidates the opportunity to submit "established party" nominating papers. If the ILGP candidates do not have the opportunity to submit nominating papers, the ISBE will not be required to determine their sufficiency, and there will be no agency action subject to judicial review. Because there is no

other mechanism to fight the refusal of ISBE to accept their nomination papers, and no decision to submit for judicial review, the ILGP's filing of declaratory judgment is appropriate.

The Election Code provides two means by which a political party may become an "established political party" within the meaning of the Election Code. 10 ILCS 5/10-2. First, "[a] political party which, at the last general election for State and county officers, polled for its candidate for Governor more than 5% of the entire vote cast for Governor, is an 'established political party' as to the State and as to any district or political subdivision thereof." 10 ILCS 5/10-2. Second, a party who did not nominate a candidate for Governor in the last general election or whose candidate did not earn more than 5% of the vote in the last general election may still become an established political party within a particular district or political subdivision.

Section 10-2 of the Election Code provides:

"A political party which, at the last election in any congressional district, legislative district, county, township, municipality or other political subdivision or district in the State, polled more than 5% of the entire vote cast within *such territorial area or political subdivision*, as the case may be, has voted as a unit for the election of officers to serve *the respective territorial area of such district or political subdivision*, is hereby declared to be an 'established political party' within the meaning of this Article as to such district or political subdivision." (Emphasis added)

10 ILCS 5/10-2

Section 10-2 also describes the consequences that follow upon the redistricting of a representative district: "For the first election following a redistricting of representative districts, a petition to form a new political party in a representative district shall be signed by at least 1,500 qualified voters of the representative district." 10 ILCS 5/10-2.

The issue here is whether redistricting of districts alters a party's status when the party is an "established party" only as to the previously drawn district. The Second District Appellate Court, in *Vestrup v. Du Page County Election Comm'n*, 335 Ill. App. 3d 156 (2nd Dist. 2002)

addressed just such an issue. The *Vestrup* court found that “the legislature intended to confer established party status with respect to districts and political subdivisions, not geographic areas defined independently of political boundaries.” *Id.* at 382.

The *Vestrup* court held that “a party's status as an established political party in a particular representative district does not outlast in any fashion the existence of that district once it has been altered by redistricting.” 335 Ill. App. 3d at 382. The *Vestrup* court found that the statute’s use of “territorial area” was “to underscore the necessity that the *entire* district or political subdivision voted as a unit in the last election for a party to qualify for the status of established political party in that district or political subdivision” not to indicate that the territorial area was the basis for conferring political party status. *Id.*

The *Vestrup* court cited the US Supreme Court for the proposition that states have the right to “condition access to the general election ballot by a minor-party or independent candidate upon a showing of a modicum of support among the potential voters for the office.” *Vestrup*, 335 Ill. App. 3d at 382, citing *Munro v. Socialist Workers Party*, 479 U.S. 189, 193 (1986). The *Vestrup* court reasoned that granting a political party the status of an established political party in any district that includes any piece of a former district “would permit a political party to spread from ballot to ballot not through a proportionate showing of public support but through the unpredictable processes of redistricting.” 335 Ill. App. 3d at 383.

The *Vestrup* court concluded by holding that “established political parties that are less than statewide established political parties lose their status as established political parties when the district or political subdivision in which they were established ceases to exist.” *Id.* at 383.

Plaintiffs argue that a case in the First District decided at the same time as *Vestrup* should control. That case, *Preuter v. State Officers Electoral Bd.*, 334 Ill. App. 3d 979 (Ill. App. Ct. 1st

Dist. 2002), dealt with Objectors who filed to remove candidates from the ballot who had been given established party treatment by the ISBE in its Candidate's Guide.

In *Preuter*, the ISBE had included the candidates' party as an "established party" in the Candidate's Guide, the Objectors argued that because of redistricting, the candidates should not have been given that status, and the ISBE subsequently removed the candidates from the ballot. *Id.* at 981. The candidates sought judicial review, arguing that the ISBE had conferred established party status on them and they relied on that decision to their detriment.

The court held that the ISBE was estopped to deny established party status, as its voters guide specifically provided that the party was established in the districts at issue until a court ruled otherwise. 334 Ill. App. 3d at 989. Although the court held that Section 10-2, defining an established political party, was ambiguous, the basis of its ruling was that the ISBE had conferred established party status on the candidates in their Guide, and that the candidates had suffered damages because that status was revoked upon objection. *Id.*

The present case can be distinguished from *Preuter*, in that, unlike the candidates in *Preuter*, Schmidt was never given established party status by the ISBE, and cannot claim she relied on their designation to her detriment. That the *Preuter* court deemed Section 10-2 ambiguous in that context does not require this court to interpret it as such. And, unlike the court in *Vestrup*, the court's primary focus in *Preuter* was not on the effect of redistricting in determining the status of a political party, but rather whether the candidates reliance on the ISBE Guide was reasonable, and whether the ISBE should be estopped from revoking the candidates' "established party" status.

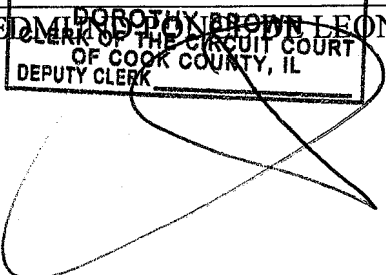
The Plaintiffs in the present case are similarly situated to the Plaintiff in *Vestrup* and the same reasoning applies. Although Schmidt did garner enough votes to be an established party

candidate in the previously drawn Third Congressional District, that District no longer exists as it did back then, and she can no longer claim established party status on the basis of her performance in the now defunct district.

This matter coming to be heard on Plaintiffs Request for Summary Judgment, Declaratory Judgment and Permanent and Preliminary Injunctions, and Defendant's Motion to dismiss, and for the above reasons,

**IT IS HEREBY ORDERED THAT,** Defendant's Motion to Dismiss is granted and accordingly for the reasons stated herein, the Plaintiffs' Request for Declaratory Judgment, Permanent and Preliminary Injunctions, and Summary Judgment are DENIED. This Judgment is final and appealable.

ENTERED JUDGE EDMUND PONCE DE LEON - 1708  
NOV 23 2011  
JUDGE EDMUND PONCE DE LEON  
CLERK OF THE CIRCUIT COURT  
OF COOK COUNTY, IL  
DEPUTY CLERK



November \_\_\_\_\_, 2011